

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHEVRON, U.S.A., Inc.

Appellant,,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent

PCHB 86-119

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

This matter, the appeal of Notice and Order of Civil Penalty No. 6456, issued by the Puget Sound Air Pollution Control Agency (PSAPCA), assessing a fine of \$1,000 for the alleged transfer of gasoline to a stationary tanker without connecting vapor return lines, came on for hearing before the Board on October 3, 1986, at Lacey, Washington, before Board members Wick Dufford (presiding) and Lawrence J. Faulk, Chairman. PSAPCA elected a formal hearing.

1 Appellant corporation was represented by Bradley Bagshaw, Attorney
2 At Law. Respondent agency was represented by Keith McGoffin, Attorney
3 At Law. The proceedings were transcribed.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. Argument was heard. From the testimony, evidence and
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Chevron U.S.A., Inc. is a corporation whose operations include the
10 delivery of gasoline to service stations where it is sold to the
11 driving public.

12 II

13 PSAPCA is a municipal corporation with responsibility for carrying
14 out a program of air pollution prevention and control in a
15 multi-county area including the site of the Chevron service station
16 which is the focus of this appeal. PSAPCA has filed with this Board a
17 certified copy of its regulations, of which we take official notice.

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26 FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

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III

1 As they were driving by in an automobile, on the evening of May 2,
2 1986 at approximately 11:40p.m., a PSAPCA inspector and an agency
3 engineer observed a Chevron tanker truck at the Chevron station
4 located at 914 James Street in Seattle. They could see from the street
5 that the gasoline fill lines were connected from the truck to the
6 underground storage tanks at the station, but that no vapor return
7 lines were connected.
8

IV

9 The PSAPCA personnel stopped their car and the inspector
10 approached the driver of the truck who was on the opposite side of the
11 truck from where the hoses were connected. The driver was eating pizza
12 with the service station attendant. The inspector pointed out to the
13 driver that he had not connected the vapor return lines and he agreed.
14 She advised the station attendant that a violation of PSAPCA's
15 regulations had occurred.
16

V

17 PSAPCA's inspector was under the impression that gasoline was
18 being transferred between the truck and the station's tanks while she
19 was on the scene. She testified to smelling gasoline vapors in the air
20 and hearing a subtle flowing sound. She did not observe gas being
21 delivered through a sight glass nor did she see the position of the
22 valves used to let gas through the hoses.
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25 FINAL FINDINGS OF FACT
26 CONCLUSIONS OF LAW
27 AND ORDER

VI

Chevron's driver, a veteran of sixteen years with the company, testified that after he began his hook-up, but before connecting the vapor return lines, a pizza delivery truck drove into the station. He temporarily abandoned the hook-up process while he shared some pizza with the station attendant.

He said that he was not transferring gasoline when he was approached by PSAPCA's inspector and did not start to do so until after the inspector departed. Then he hooked up the vapor return lines and delivered the product in the usual way.

The driver stated that gasoline flows from the truck to the underground tanks by gravity and that you cannot hear it when it is flowing through the hoses.

VII

On June 12, 1986 PSAPCA issued Notice and Order of Civil Penalty No 6456 assessing a fine of \$1,000 for allegedly violating section 2.07(b)3 of Regulation I. Appellant received the Notice on June 16, 1986. Feeling aggrieved by this decision, appellant appealed to the Board on July 14, 1986.

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

VIII

1 Chevron's environmental compliance specialist, an engineer,
2 testified that if vapor recovery lines were not in place, the vapors
3 would not be readily detectable in the immediate vicinity of the
4 tanker truck. The blueprints for the station's tank system show that
5 any vapors would be vented at the back of the station through a pipe
6 at roof level about 50 feet away from where the truck was parked.
7

8 She confirmed that, with the transfer system in use, the flow of
9 the product cannot be heard while it is moving through the hoses to
10 the underground tanks. Moreover, she noted that failure to hook up the
11 gasoline vapor return lines would considerably slow the flow of
12 gasoline through the hoses.

13 IX

14 The agency showed a Chevron training film in which a tanker truck
15 driver goes through the hook-up and delivery process at a service
16 station. In the film the driver connects the vapor return lines before
17 connecting the gas lines, although there is no instruction or
18 commentary on this point.

19 Chevron's witnesses said that there is no company policy on which
20 hoses must be hooked-up first.

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25 FINAL FINDINGS OF FACT
26 CONCLUSIONS OF LAW
27 AND ORDER

X

After listening to all the testimony, we accept Chevron's version of the facts. We were not persuaded that any gasoline was transferred from the tanker truck to the underground tanks without the vapor return lines being connected. The only vapors shown to be present in the air were of mozzarella.

XI

Any Conclusion of Law determined to be a Finding of Fact is hereby adopted as such.

From these Facts, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.

II

PSAPCA's Regulation II, Section 2.07(b)(3), prohibits the transfer of gasoline from transport to stationary tank without all vapor return lines being connected.

Since we have found that no such transfer occurred in this case, the Notice and Order of Civil Penalty asserting this violation must be stricken down.

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

III

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From this Conclusion, the Board enters this

ORDER

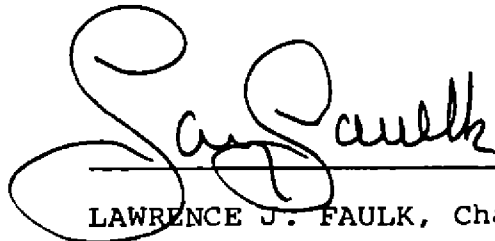
Notice and Order of Civil Penalty No. 6456 is reversed and shall be of no further force or effect.

DONE this 13th day of February, 1987.

POLLUTION CONTROL HEARINGS BOARD



WICK DUFFORD, Member

 2/13/87

LAWRENCE J. FAULK, Chairman

FINAL FINDINGS OF FACT
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AND ORDER